IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.Rev.Pet.No. 978 of 1998-B

CRA.106/1996 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.555/1992 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA
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REVN. PETITIONER:
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1. OMANA, THAZHATHEPADEETTATHIL VEEDU
ERUMAKUZHY, PALEMEL VILLAGE
MAVELIKKARA.

2. SASI DO DO

BY ADV. SRI.K.S.MOHAMED HASHIM

RESPONDENTS:

STATE OF KERKALA REPRESENTED BY EXCISE INSPECTOR,
MAVELIKKARA RANGE.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 5-3-2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 4849 OF 1998 IN CRL.R.P.NO.978 OF 1998

DISMISSED.

5-3-2007 **SD/-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.978 of 1998

DATED THIS THE 5th day of march 2007

ORDER

The revision petitioners are the accused in C.C.No.555/1992 with respect to the offence under Section 55(a) of the Abkari Act and sentenced to undergo simple imprisonment for six months each and to pay a fine of Rs.1000/- each and in default to undergo simple imprisonment for two months each. The prosecution case is that on 13-9-1991 the Excise party that was scouting the area on patrol duty on receipt of source information searched the house of the 2nd accused and detected 5 litres of illicit arrack in a 10 litres plastic container kept in the kitchen of the house of A2. The same was seized and on chemical examination of the sample, it was found to contain 37.79% by volume of ethyl alcohol. The appellate court confirmed the conviction and sentence.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 6, Esxts.P1 to P6 and MO.1 The case of the accused is one of total denial. The defence examined DW1,

the 2nd accused, and DW2 and marked Exts.D1 and D1(a). The 2nd accused is the husband of the first accused. PWs.1 and 2 are the Preventive Officers who detected the offence and PW5 is the Excise Inspector who filed the complaint along with the request for sending the sample for chemical examination. PW6 is the Assistant Excise Inspector who produced the contraband articles and the connected records before the court. PWs.3 and 4 are the independent witnesses to search and recovery. PWs.1 and 2 have testified as to the receipt of information and search of the house after compliance of due legal formalities. PWs.3 and 4,the independent witnesses have turned hostile. It was found on a consideration of the evidence adduced in the matter by both the courts below that there is nothing to disbelieve the version of PWs.1 and 2. I find that no material contradictions or inconsistencies have been brought out in the cross examination of the above witnesses. The defence case that accused No.2 is living in a separate house, supported by Ext.D1 ration card was disbelieved as it was found that Ext.D1 ration card was

obtained much subsequent to the detection of the offence. Hence the evidence of PW2, the licensee of the ration depot was also rejected; and rightly so.

3. I find that as per the prosecution evidence the head of the family is accused No.2. Hence, I find that nothing has been produced to establish the fact that accused No.1, wife is also involved in keeping possession of the illicit liquor. In the circumstances, I find that there is no legal basis for convicting accused No.1, the wife. Hence, the conviction and sentence imposed on the first accused is herewith set aside.

4. Counsel for the revision petitioner has pleaded for leniency pointing out the fact that the accused hailed from very poor circumstances and that the incident has taken place in 1991 and that so far, i.e. for more than 16 years they were facing the ordeal of prosecution and the court proceedings. In the circumstances the sentence imposed on accused No.2 is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment

for one month. The revision petition is disposed of accordingly. The revision petitioner/A2 shall appear before the J.F.C.M., Mavelikara on 16-4-2007 to receive sentence.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO. 978 OF 1998

ORDER

5th March -2007